

REMARKS

Applicant respectfully requests reconsideration and allowance of claims 3, 4, 7-16, 18-24 and 26 that are pending in the above-identified patent application. Applicant has amended claims 9-12, 15-16, 19 and 21-24. Applicant has cancelled claims 17 and 25 without prejudice.

Applicant submits that the amended language of the claims is based on the recitation of the invention found in claims 17 and 25, which have been cancelled. Accordingly, Applicant submits that no new matter has been added and that entry of the amendment is proper under 37 C.F.R. § 1.115.

In the Advisory Action dated March 19, 2002, the Examiner refused to enter the amendment dated January 30, 2002 (received at the Patent Office on February 15, 2002). Thus, Applicant has filed an RCE application and submits this amendment in response to the Final Office Action dated August 1, 2001.

At numbered paragraphs 1 and 2 of the Office Action, the Examiner rejected claims 3-4, 7-10, 12-20 and 22-26 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,729,549 ("the Kostrecki reference"), in view of U.S. Patent No. 5,765,113 ("the Russo reference"). In light of the amendments hereinabove, Applicant respectfully traverses the Examiner's rejection.

A data reception device in accordance with the present invention employs operating system software to enable basic functions of the data reception device. The operating system software may itself, or in combination with an application program, permit a user to receive program data that has been wirelessly transmitted over, for example, a digital satellite broadcast network. As such digital broadcast systems are just beginning to become popular, manufacturers of the data reception

devices often need to change the operation system, for example, to correct for errors in the software code, to enable new functions of the data reception device, etc. Traditionally, changing operating system software requires that the user purchase a disk or the like and load the same into a piece of equipment. This method of distributing new operating system software has practical limitations, particularly when many data reception devices need to be updated.

In accordance with the invention, however, the operating system software is preferably transmitted wirelessly to the data reception device by multiplexing it within a digital signal that is received by the data reception device. This presents a potential problem because if the signal quality of the digital signal is not sufficiently high, then the operating system software could be corrupted during the reception process. This could have disastrous effects if corrupted operating system software were to run on the data reception device, possibly rendering the data reception device completely useless. In order to avoid this undesirable situation, the present invention provides a signal quality detection means and a control means for permitting the storing of the received operating system software only when the average quality level of the received digital signal is better than a predetermined level.

Independent apparatus claim 9, as amended, recites "software detecting means for detecting operating system software in said received digital signals in an ordinary receiving mode, said operating system software being multiplexed in said digital signals and executed to control said data reception device; signal quality detecting means for detecting a quality level of said received digital signals in a predetermined period of time and for calculating an average quality level; ... and control means for controlling said storing operation of said operating

system software, wherein said control means executes said storing operation only when said average quality level is better than a predetermined level." Independent method claim 19, as amended, recites method steps that substantially track the above-quoted features of independent apparatus claim 9.

Applicant agrees with the Examiner that the *Kostrecki* reference does not disclose or suggest signal quality detection or controlled storage of received operating system software such that storage is permitted only when an average signal quality level is better than a predetermined level. Applicant further submits, however, that the *Kostrecki* reference fails to disclose or suggest that operating system software is detected and/or received in an ordinary receiving mode, and certainly does not disclose or suggest extracting the detected operating system software from received digital signals as claimed. Indeed, the *Kostrecki* reference only discloses that application software and/or a limited number of frames of information may be downloaded over a specialized narrow band network during an interactive session (Col. 29, lns. 31-39). The *Russo* reference fails to remedy these deficiencies of the *Kostrecki* reference.

Applicant submits that the cited combination of *Kostrecki* and *Russo* references fails to disclose or suggest the invention as recited in either of independent claims 9 or 19, as amended. Accordingly, Applicant submits that the Examiner's § 103(a) rejection of independent claims 9 and 19 should be withdrawn. Furthermore, claims (3-4, 10-16, and 18) and claims (7-8, 20-24 and 26) depend from independent claims 9 and 19, respectively, and contain all of the limitations thereof, as well as other limitations that are neither disclosed nor suggested by the prior art of record. Accordingly, Applicant submits that the subject dependent claims are likewise patentable.

At numbered paragraph 3 of the Office Action, the Examiner rejected claims 11 and 21 under 35 U.S.C. § 103(a) as being unpatentable over the *Kostrecki* and *Russo* references, and further in view of U.S. Patent No. 5,951,639 ("the *MacInnis* reference"). Applicant respectfully traverses the Examiner's rejection.

Applicant submits that claims 11 and 21 are patentable over the cited combination of the *Kostrecki*, *Russo* and *MacInnis* references at least because they depend from independent claims 9 and 19, respectively. As discussed above, Applicant submits that independent claims 9 and 19 are patentable over the cited combination of the *Kostrecki* and *Russo* references. The *MacInnis* reference fails to remedy the deficiencies of the *Kostrecki* and *Russo* references as concerns claims 9 and 19. Accordingly, Applicant submits that claims 11 and 21 are patentable and the Examiner's § 103(a) rejection should be withdrawn.

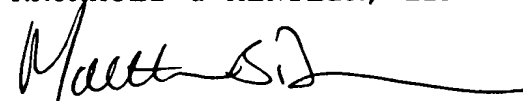
In view of the foregoing, Applicant submits that the instant claims are in condition for allowance. Early and favorable action are earnestly solicited. If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he telephone Applicant's attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

Application No. 09/035,612

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

Respectfully submitted,

LERNER, DAVID, LITTENBERG,
KRUMHOLZ & MENTLIK, LLP

A handwritten signature in black ink, appearing to read "Matt Dernier", with a long horizontal flourish extending to the right.

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